

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

In re: Dearnta Thomas

No. 19-292, United States Court of Appeals for the Fourth Circuit (February 23, 2021)

SUMMARY

The Fourth Circuit held that **Davis v. United States** (invalidating 18 U.S.C. § 924(c)'s residual clause) applies retroactively to cases on collateral review as a new substantive rule of constitutional law. The court granted authorization for a successive § 2255 motion, finding the movant stated a plausible claim that his VICAR assault conviction no longer qualifies as a predicate crime of violence under § 924(c)'s force clause. The opinion clarifies the prima facie standard for successive habeas authorization and the categorical analysis of VICAR predicates.

CASE DETAILS

COURT	United States Court of Appeals for the Fourth Circuit
WRITING FOR THE COURT	Richardson; WILKINSON; AGEE; RICHARDSON
JURISDICTION	Federal
DECIDED	February 23, 2021
DOCKET	19-292
DISPOSITION	other
PROCEDURAL POSTURE	Application for authorization to file a second or successive 28 U.S.C. § 2255 motion
STANDARD OF REVIEW	The movant must make a prima facie showing that the application satisfies § 2255(h)(2) and state a plausible claim for relief.
PRECEDENTIAL VALUE	Published
PARTIES	Dearnta Thomas v. United States of America

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QUESTIONS PRESENTED

1. Whether *Davis v. United States* announced a new rule of constitutional law made retroactive to cases on collateral review by the Supreme Court and previously unavailable.
2. Whether Thomas has stated a plausible claim that his § 924(c) conviction is invalid after *Davis*.

HOLDINGS

1. *Davis* applies retroactively to cases on collateral review because it announced a new substantive rule of constitutional law.
2. Thomas has stated a plausible claim for relief that warrants further exploration by the district court.

KEY QUOTATIONS

“a single case that expressly holds a rule to be retroactive is not a sine qua non for satisfying § 2244(b)(2) (A)’s requirement that the Supreme Court itself make the rule retroactive” (5)

“states a ‘plausible claim for relief’” (9)

“may entail a cursory glance at the merits” (10)

“There comes a point where a procedural system which leaves matters perpetually open no longer reflects humane concern but merely anxiety and a desire for immobility.” (13)

FACTUAL BACKGROUND

In 2011, Thomas pleaded guilty to a substantive RICO offense and a § 924(c) offense for possessing a firearm in furtherance of a crime of violence. The predicate crime of violence was aiding and abetting VICAR assault with a dangerous weapon, which was based on two Virginia state-law offenses: Va. Code Ann. §§ 18.2-53.1 and 18.2-282. After the Supreme Court decided *Davis v. United States*, 139 S. Ct. 2319 (2019), which held that § 924(c)’s residual clause was unconstitutionally vague, Thomas sought authorization to file a successive § 2255 motion, arguing that his § 924(c) conviction was not predicated on a valid crime of violence.

PROCEDURAL HISTORY

Thomas pleaded guilty in 2011 to RICO and § 924(c) offenses. He did not appeal. After *Sessions v. Dimaya*, he filed a § 2255 motion, which was denied as time-barred. He then sought authorization to file a successive § 2255 motion before *Davis* was decided, which was denied. After *Davis*, he filed the instant motion for authorization.

DISPOSITION

other

CASES CITED

- *Davis v. United States*, 139 S. Ct. 2319 (2019)
- *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018)
- *Johnson v. United States*, 576 U.S. 591 (2015)
- *Welch v. United States*, 136 S. Ct. 1257 (2016)

- *Teague v. Lane*, 489 U.S. 288 (1989)
- *Tyler v. Cain*, 533 U.S. 656 (2001)
- *In re Irby*, 858 F.3d 231 (4th Cir. 2017)
- *In re Hubbard*, 825 F.3d 225 (4th Cir. 2016)
- *United States v. Mathis*, 932 F.3d 242 (4th Cir. 2019)
- *United States v. Keene*, 955 F.3d 391 (4th Cir. 2020)
- *In re Vassell*, 751 F.3d 267 (4th Cir. 2014)
- *In re Phillips*, 879 F.3d 542 (4th Cir. 2018)
- *United States v. Bryant*, 949 F.3d 168 (4th Cir. 2020)
- *Manners v. United States*, 947 F.3d 377 (6th Cir. 2020)
- *United States v. Reece*, 938 F.3d 630 (5th Cir. 2019)
- *In re Franklin*, 950 F.3d 909 (6th Cir. 2020)
- *United States v. Bowen*, 936 F.3d 1091 (10th Cir. 2019)
- *In re Hammoud*, 931 F.3d 1032 (11th Cir. 2019)
- *In re Matthews*, 934 F.3d 296 (3d Cir. 2019)
- *Stringer v. Black*, 503 U.S. 222 (1992)
- *Lambrix v. Singletary*, 520 U.S. 518 (1997)
- *Butler v. McKellar*, 494 U.S. 407 (1990)
- *Schriro v. Summerlin*, 542 U.S. 348 (2004)
- *San-Miguel v. Dove*, 291 F.3d 257 (4th Cir. 2002)
- *In re Williams*, 364 F.3d 235 (4th Cir. 2004)
- *In re Williams*, 330 F.3d 277 (4th Cir. 2003)
- *In re Stevens*, 956 F.3d 229 (4th Cir. 2020)
- *Felker v. Turpin*, 518 U.S. 651 (1996)
- *United States v. Hawkins*, 724 F.3d 915 (7th Cir. 2013)
- *Avery v. United States*, 140 S. Ct. 1080 (2020)